

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
V.)	CR. No.: 1:06cr107-MHT
)	
MICHAEL D. HARVEY)	

UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW the Defendant, Michael D. Harvey, by and through undersigned counsel, Kevin L. Butler, and moves this Court, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h)(3)(A)(B), (h)(8)(B)(ii), and (h)(8)(B)(iv) for a continuance of his trial setting of August 7, 2006 to November 6, 2006. In support of this motion, Defendant would show the following:

1. Mr. Harvey is charged in a three count Indictment with sexual misconduct with a person who had not attained the age of 12.
2. Mr. Harvey is a 19 year old male. Juvenile education records indicate he has a possible Intelligent Quota (IQ) of 51 and a history of psychiatric treatment. He also has a past history of physical and sexual abuse by both men and women. The physical abuse may include incidents where, as an infant, Mr. Harvey was dropped from a moving vehicle and attacked and bitten in the head by a dog. The dog attack was so severe that Mr. Harvey's skull was pierced by the dog's teeth.
3. Prior to his arrest on these charges, Mr. Harvey resided in Seminary, Mississippi with his mother and all material and relevant records are located out of this district.
4. In addition to investigating Mr. Harvey's personal background, undersigned counsel is presently working in conjunction with a clinical/forensic psychologist to determine

Mr. Harvey's current and past ability to understand the nature of these proceedings and the questioning which led to his statements he provided to law enforcement. The records being sought in Seminary, Mississippi will be of assistance to the clinical/forensic psychologist in her review and analysis of the defendant's psychiatric and mental health conditions.

5. Finally, in addition to gathering personal information and conducting psychiatric testing, undersigned counsel is attempting to interview Mr. Harvey's family and friends. However, many of these individual are transient and have limited education. Therefore, locating them has been difficult.
6. All of the information sought through the defense's case investigation will be relevant, material and necessary for trial of this matter, necessary to determine Mr. Harvey's competence and necessary for effective plea negotiations.
7. However, the defense investigation will not be completed on or before the presently scheduled August 7, 2006 trial date. Therefore, it is in the interest of justice to continue this matter.
8. Requests for a continuance are addressed to the sound discretion of the trial court. United States v. Darby, 744 F.2d 1508, 1521 (11th Cir. 1984), reh. denied 749 F.2d 733, cert. denied 471 U.S. 1100 (1985). A continuance in order to allow defense counsel "the reasonable time necessary for effective preparation" for trial is one of the factors considered significant by the Speedy Trial Act. United States v. Davenport, 935 F.2d 1223, 1235 (11th Cir. 1991); 18 U.S.C. 3161 (h)(8)(B)(iv). The Eleventh Circuit has repeatedly recognized that a continuance in order to provide adequate preparation by counsel serves the ends of justice. United States v. Goetz,

826 F.2d 1025, 1028 (11th Cir. 1987) (upholding, against speedy trial claim, a continuance of eighty days to allow new counsel to prepare for trial); United States v. Elkins, 795 F.2d 919, 924 (11th Cir. 1986), cert. denied 479 U.S. 952 (1986) (upholding against speedy trial claim, a continuance to allow new counsel time to prepare); United States v. Sarro, 742 F.2d 1286, 1300 (11th Cir. 1984), reh, denied 751 F.2d 394 (1984). In this case, the ends of justice will be served by allowing the defense adequate time to locate all information relevant and necessary to prepare a defense to the charges and determine Mr. Harvey's competence.

9. Additionally, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h)(3)(A)(B), and (h)(8)(B)(ii), this court has authority to continue trial to allow counsel time to investigate this complex case and determine Mr. Harvey's mental competency.
10. The United States, through Assistant United States Attorney Verne Speirs, does not oppose the granting of a continuance.
11. A waiver of speedy trial signed by Mr. Harvey is attached to this motion.

WHEREFORE, for the foregoing reasons, Mr. Harvey respectfully requests that his trial date be continued from the presently scheduled date of August 7, 2006 until November 6, 2006.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Verne Speirs, Esquire
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully submitted,

s/ Kevin L. Butler
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